



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0004]

RIN 1625-AA00

Safety Zone; Misery Challenge, Manchester Bay, Manchester, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of Manchester Bay to be enforced during the Misery Challenge marine event, which will involve swimmers, kayakers, and stand-up paddlers. This safety zone ensures the protection of the event participants, support vessels, and the maritime public from the hazards associated with the event. This regulation prohibits persons and vessels from entering into, transiting through, mooring, or anchoring within this safety zone during periods of enforcement unless authorized by the Coast Guard Sector Boston Captain of the Port (COTP) or the COTP's designated representative.

DATES: This rule is effective from 7:00 a.m. to 12:30 p.m. on July 23, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0004 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email, call or email Mr. Mark Cutter, Sector Boston Waterways Management Division, U.S. Coast Guard; telephone 617-223-4000, e-mail Mark.E.Cutter@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

DHS	Department of Homeland Security
U.S.C.	United States Code
CFR	Code of Federal Regulation
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
NAD 83	North American Datum of 1983
§	Section

II. Background, Purpose, and Legal Basis

On October 23, 2015, the Coast Guard was notified of a swimming and stand up paddling event from 7:30 a.m. to 12 p.m. on July 23, 2016 with a weather date on July 24, 2016 named the Misery Challenge. The participants will launch from Tucks Point in Manchester Bay, Manchester, MA and continue around Greater Misery Island returning to Tucks Point. In response, on March 2, 2016, the Coast Guard published an NPRM titled Safety Zone; Misery Challenge, Manchester Bay, Manchester, MA (81 FR 10820). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this event. During the comment period that ended April 1, 2016, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP Boston has determined that potential hazards associated with the event on July 23, 2016 will be a safety concern for the participants and support vessels. The purpose of this rule is to ensure safety of participants, vessels and the navigable waters in the safety zone before, during, and

after the scheduled event.

IV. Discussion of Proposed Rule

As noted above, we received no comments on our NPRM published on March 2, 2016. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 7:00 a.m. to 12:30 p.m. on July 23, 2016 with a weather date on July 24, 2016. The safety zone will cover all navigable waters within specific geographic locations specified in the regulatory text on the navigable waters of Manchester Bay, Manchester, Massachusetts. Vessels not associated with the event shall maintain a distance of at least 100 yards from the participants. The duration of the zone is intended to ensure the safety of event participants, support vessels, and the maritime public before, during, and after the event scheduled from 7:30 a.m. to 12 p.m. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text appears at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order

12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

We expect the economic impact of this rule to be minimal. This regulation may have some impact on the public, but that potential impact will likely be minimal for several reasons. First, this safety zone will be in effect for only 5 and 1/2 hours in the morning when vessel traffic is expected to be light. Second, vessels may enter or pass through the safety zone during an enforcement period with the permission of the COTP or the designated representative. Finally, the Coast Guard will provide notification to the public through Broadcast Notice to Mariners well in advance of the event.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

For all of the reasons discussed in the REGULATORY PLANNING AND REVIEW section, this rule would not have a significant economic impact on a substantial number of small entities.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in

the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the

Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 5 and 1/2 hours that would prohibit entry within 100 yards of the participants and vessels in support of the event. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C., 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add a new §165.T01-0188 to read as follows:

§ 165.T01-0188 Safety Zone - Misery Challenge - Manchester Bay, Manchester, Massachusetts.

(a) General. Establish a temporary safety zone:

(1) Location. The following area is a safety zone: All navigable waters, from surface to bottom, within 100 yards from the participants and vessels in support of events in Manchester Bay, Manchester, Massachusetts, and enclosed by a line connecting the following points (NAD 83):

Latitude Longitude

42°34'03" N 70°46'42" W; thence to
42°33'58" N 70°46'33" W; thence to
42°32'30" N 70°47'43" W; thence to
42°32'58" N 70°48'40" W; thence to point of origin.

(2) Effective and Enforcement Period. This rule will be effective on July 23, 2016, from 7:00 a.m. to 12:30 p.m. with a weather date on July 24, 2016.

(b) Regulations. While this safety zone is being enforced, the following regulations, along with those contained in 33 CFR 165.23 apply:

(1) No person or vessel may enter or remain in this safety zone without the permission of the Captain of the Port (COTP) or the COTP's representatives. However, any vessel that is granted permission by the COTP or the COTP's representatives must proceed through the area with caution and operate at a speed no faster than that speed necessary to maintain a safe course, unless otherwise required by the Navigation Rules.

(2) Any person or vessel permitted to enter the safety zone shall comply with the directions and orders of the COTP or the COTP's representatives. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing lights, or other means, the operator of a vessel within the zone shall proceed as directed. Any person or vessel within the safety zone shall exit the zone when directed by the COTP or the COTP's representatives.

(3) To obtain permissions required by this regulation, individuals may reach the COTP or a COTP representative via VHF channel 16 or 617-223-5757 (Sector Boston Command Center).

(c) Penalties. Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 1226.

(d) Notification. Coast Guard Sector Boston will give notice through the Local Notice to Mariners and Broadcast Notice to Mariners for the purpose of enforcement of this temporary safety zone. Sector Boston will also notify the public to the greatest extent possible of any period in which the Coast Guard will suspend enforcement of this safety zone.

(e) COTP Representative. The COTP's representative may be any Coast Guard commissioned,

or petty officer or any federal, state, or local law enforcement officer who has been designated by the COTP to act on the COTP's behalf. The COTP's representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, a state or local law enforcement vessel, or a location on shore.

Dated: June 13, 2016

C. C. Gelzer
Captain, U.S. Coast Guard
Captain of the Port Boston
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